

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

KSENIIA PETROVA,)	CIVIL ACTION NO.
Petitioner,)	2:25-cv-00240-cr
)	
v.)	
)	
U.S. DEPARTMENT OF HOMELAND)	
SECURITY, <i>et al.</i> ,)	
Respondents.		

BAIL HEARING
Wednesday, May 28, 2025
Burlington, Vermont

BEFORE:

THE HONORABLE CHRISTINA C. REISS,
Chief District Judge

APPEARANCES:

GREGORY ROMANOVSKY, ESQ., Romanovsky Law Offices, 12 Marshall
Street, Boston, MA 02108, Counsel for the Petitioner

JEFFREY M. HARTMAN, ESQ., U.S. Department of Justice, Civil
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Respondents

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INDEX TO EXAMINATIONS

WITNESS	PAGE
MICHAEL D. WEST, Ph.D.	
Direct by Mr. Romanovsky	9
Cross by Mr. Hartman	18
CORA E. ANDERSON	
Direct by Mr. Romanovsky	19
MARIA DAIKOVA	
Direct by Mr. Romanovsky	25
Cross by Mr. Hartman	28
MARC W. KIRSCHNER, Ph.D.	
Direct by Mr. Romanovsky	29

INDEX TO EXHIBITS

PETITIONER			
EXHIBIT	DESCRIPTION	I.D.	RECEIVED
A	Declaration of Peter A. Quinter	36	36
B	Declaration of Andrea Nicole Wilson	36	36
C	5/1/25 Letter from Martin Chalfie, Ph.D.	36	36
D	Copy of Canceled Visa	36	36
E	Copy of Schengen Visa	36	36
F	4/10/25 FOIA Request	36	36
G	District of Massachusetts Criminal Complaint	36	36
H	5/14/25 Memo to Hon. Kayla McClusky from USPO Kristin Vidrine	36	36
I	Government's Motion to Seal District of Massachusetts Complaint	36	36
J	4/22/25 Letter to Secretary Noem and Acting Director Lyons from Massachusetts Members of Congress	36	36

1 Wednesday, May 28, 2025

2 (The following was held in open court at 10:05 AM.)

3 COURTROOM DEPUTY: Your Honor, this is civil case
4 number 25-240, Kseniia Petrova v. United States Department of
5 Homeland Security, Kristi Noem, and Theresa Messier.
6 Representing the respondents is Attorney Jeffrey Hartman.
7 Representing the petitioner is Attorney Gregory Romanovsky.
8 The petitioner is present via video. Also present is Russian
9 interpreter Naira Hapopian.

10 The matter before the Court is a bail hearing.

11 THE COURT: Good morning. I want to let you know how
12 we're going to proceed today so you can arrange yourself
13 accordingly. The first thing I'm going to do is review the
14 motion for leave to amend.

15 Where is that feedback coming from? Yeah. Somebody's
16 pointing to the microphone or the amplifier, but I think
17 that -- we don't have an interpreter, correct?

18 COURTROOM DEPUTY: We do.

19 THE COURT: We do. Okay. That's what I'm hearing.
20 All right.

21 So I'm going to rule on the motion for leave to amend,
22 we're going to take up our witnesses and have that portion
23 completed, I'm going to hear your arguments, and then I'm going
24 to rule on the pending bail request.

25 So with regard to the motion for leave to amend, it's been

1 fully briefed, and Ms. Petrova asserts that the facts have
2 changed significantly since she filed her initial petition.
3 When she filed it, she hadn't received a completed order
4 regarding her removal. She was uncertain of the grounds for
5 her detention.

6 COURTROOM DEPUTY: Judge Reiss?

7 THE COURT: Yes.

8 COURTROOM DEPUTY: The interpreter needs time to
9 interpret.

10 THE COURT: Okay. You're interpreting from there?

11 THE INTERPRETER: Yeah. I'm -- I'm interpreting for
12 Kseniia --

13 THE COURT: Okay. That's --

14 THE INTERPRETER: -- but it's echoing. Is that okay?

15 THE COURT: All right. Now I understand. I'm sorry.
16 I didn't look in your direction. Typically we have the
17 interpreter with the person --

18 THE INTERPRETER: Right.

19 THE COURT: -- and you and she are on headsets so it's
20 not interfering with the Court's proceeding. I'll start over
21 again, and you tell me --

22 THE INTERPRETER: If you have a headset, I'm happy to
23 take the headset so it's not echoing so loud.

24 THE COURT: Yes. But I don't know if you're going to
25 be able to communicate with her through that headset. It would

1 need to have to have been set up in advance.

2 Mr. Romanovsky?

3 MR. ROMANOVSKY: Your Honor, if I may, we're willing
4 to waive the interpretation for purposes of today's hearing
5 given the logistical challenges.

6 THE COURT: Okay. Ms. Petrova, can you understand me?

7 THE PETITIONER: Yes.

8 THE COURT: Would you feel comfortable interrupting me
9 if you can't understand?

10 THE PETITIONER: Okay.

11 THE COURT: All right. I give you my permission to do
12 that. Okay?

13 THE PETITIONER: Okay.

14 THE COURT: All right. And I'm sorry. We usually
15 have the person in the room, and I expected if you were going
16 to have an interpreter that's what would happen. Otherwise, I
17 don't think the attorneys can hear me while you are
18 interpreting through a microphone. I'm sorry about that.

19 So I'm going to start over again.

20 I'm going to rule on the motion for leave to amend because
21 that's going to shape the Court's jurisdiction and the claims
22 before the Court.

23 And Ms. Petrova has alleged that the facts have changed
24 significantly since she filed her petition and that when she
25 filed it she didn't even have a completed order of removal or

1 the grounds for her detention. She claims that because the
2 government has chosen to criminally prosecute her, which she
3 claims is an effort to deprive this court of habeas
4 jurisdiction, she should be allowed to amend her petition to
5 reflect this change in circumstances.

6 The government counters that leave to amend should be
7 denied because of unexcused delay in seeking leave to amend.
8 It further argues that many of Ms. Petrova's claims are futile,
9 the Court lacks jurisdiction for them, and to grant her leave
10 to amend would be an exercise in futility.

11 In this case, the Court finds no undue delay. Ms. Petrova
12 moved to amend her petition shortly after the Court's last
13 hearing. The facts have been in flux and have changed
14 substantially. We have a much clearer understanding as to what
15 happened at Logan Airport and the grounds for her detention and
16 her removal proceedings. She is now affirmatively asking for
17 release from detention.

18 The government did not alert the Court at its last hearing
19 that it intended to prosecute Ms. Petrova criminally. Had it
20 done so, the Court could have factored that into its analysis.
21 I don't understand why the criminal complaint and the arrest
22 warrant were sealed. She was in ICE custody. They could have
23 effected the arrest without it. I consider that not my issue,
24 but I don't see that the government couldn't have let the Court
25 know that it was going to move in the direction of a criminal

1 prosecution.

2 Since the Court's -- since the petition was filed, the
3 Second Circuit has ruled in two cases, the *Ozturk* case and
4 *Mahdawi* case. They clarified the scope of habeas jurisdiction,
5 when a bail hearing can be held, when bail can be granted. Of
6 course, that was also set forth in *Mapp v. Reno*. So on that
7 basis, because there's no undue delay and because the facts and
8 circumstances have changed significantly since she filed her
9 initial petition, the Court hereby grants Ms. Petrova leave to
10 amend her petition.

11 In doing so, it does not dismiss the government's
12 arguments that the claims are futile or the Court lacks
13 jurisdiction. For example, I agree with the government that
14 there does not appear to be any basis for habeas corpus
15 jurisdiction for a Freedom of Information claim. I want to see
16 case law that says that before I consider that. That seems to
17 be quite outside the bounds of habeas jurisdiction.

18 When there's a pending motion to dismiss and somebody
19 amends their petition, just like an amended complaint, the
20 Court has two options: I could dismiss the motion to dismiss
21 or deny it as moot and say refile, or I could take your motion
22 to dismiss, apply it to the new petition, allow you to
23 supplement your arguments to reflect the new arguments, give
24 you an opportunity to respond.

25 That's what I'm going to do in this case. I'm going to

1 grant the government 14 days to supplement its motion to
2 dismiss, and I'm going to grant Ms. Petrova 14 days to respond
3 to that. If the parties need more time, just let me know.

4 So for this purposes, we have an amended petition for
5 habeas corpus, and now I'm going to proceed with witness
6 testimony. And my understanding is the petitioner has
7 witnesses, the government does not.

8 Do I have that right?

9 MR. ROMANOVSKY: Yes, Your Honor.

10 MR. HARTMAN: Yes, Your Honor.

11 THE COURT: Okay. So you may call your first witness.

12 MR. ROMANOVSKY: Thank you, Your Honor.

13 Would you like me to be at the podium or --

14 THE COURT: Wherever you're most comfortable. But in
15 our district, you stand when you question the witnesses. And I
16 would take your live witnesses first, but I'll let you do it in
17 any order you want to do it.

18 MR. ROMANOVSKY: You would like the live witnesses
19 first?

20 THE COURT: Any order that you would like to do it.
21 Go ahead.

22 MR. ROMANOVSKY: We would like to call Michael West,
23 who's on Zoom, Your Honor, first, if possible.

24 THE COURT: You may do so.

25 MR. ROMANOVSKY: Thank you.

Michael D. West, Ph.D. - Direct

1 COURTROOM DEPUTY: Give me a moment to unmute him.

2 Good morning. Is this Michael West?

3 THE WITNESS: Yes, it is.

4 THE COURT: Let's have the witness sworn and placed on
5 Zoom, please.

6 COURTROOM DEPUTY: Mr. West, can you start your video.

7 THE WITNESS: It requires you to activate it. It's
8 currently disabled by the host.

9 THE COURT: All right. So we have him on video.
10 Let's have him sworn, please.

11 COURTROOM DEPUTY: Mr. West, please raise your right
12 hand.

13 MICHAEL D. WEST, Ph.D.,
14 having been first duly sworn by the courtroom deputy,
15 was examined and testified as follows:

16 THE WITNESS: Yes, I do.

17 THE COURT: Go ahead.

18 DIRECT EXAMINATION

19 BY MR. ROMANOVSKY:

20 Q Good morning, Mr. West. Can you please state your full
21 name for the record.

22 A Michael David West, W-E-S-T.

23 Q Mr. West, what do you do for a living?

24 A Well, I'm a scientist and entrepreneur in the
25 biotechnology industry for the most part.

Michael D. West, Ph.D. - Direct

1 Q And could you describe your education and experience in
2 the industry.

3 A Sure. I received my Ph.D. from Baylor College of Medicine
4 in -- in Houston, Texas, from the Division of Molecular
5 Virology, and I post -- I did postdoctoral work at the
6 University of Texas Southwestern Medical Center at Dallas. And
7 then I went directly into the biotech industry as an
8 entrepreneur and made inventions and started biotech companies,
9 five public companies, and mostly in the field of developmental
10 biology, aging, and regenerative medicine.

11 Q And what do you see as your most important accomplishments
12 in the field?

13 A Well, I'm proud of the fact that I can say that I'm really
14 the father of this field we call regenerative medicine. So in
15 my first company, I collaborated with some very high-quality
16 scientists, three of which -- well, one was a Nobel Prize
17 winner, James Watson, who discovered the structure of DNA, and
18 two that won the Nobel Prize in part because of our
19 collaborative work, Dr. Carol Greider and Liz Blackburn, for
20 the work that we did in my first company relating to the
21 biology of cellular aging, something we call telomere biology.

22 Also in my first company, I initiated this field we call
23 regenerative medicine, which is -- came from the study of early
24 development, embryonic development, and so I was the one who
25 organized the first isolation of human embryonic stem cells,

Michael D. West, Ph.D. - Direct

1 which was very much in the news back in the administration of
2 George W. Bush. His first national address was -- was on this
3 project that I initiated.

4 And in the years subsequent to that, I worked in applying
5 this technology through various avenues for the problems of
6 chronic, age-related, degenerative disease, of which now
7 there's been over a thousand patients treated with therapies
8 that came originally from that research.

9 Q Mr. West, do you know Kseniia Petrova personally?

10 A No, I do not.

11 Q Why did you decide to testify today?

12 A Well, I read the news reports, and I felt that there must
13 be some kind of misunderstanding here. It went against
14 everything I understand about developmental biology, which is
15 considerable, having authored numerous books in the field, and
16 the -- the samples that I heard described were -- would be
17 entirely inert materials, nonhazardous in nature and nontoxic,
18 nonliving, and -- and, secondly, of no apparent commercial
19 value.

20 I've commercialized research products, so I have a sense
21 of the value, and I felt that there must be a misunderstanding,
22 and so I reached out to you as Ms. Petrova's attorney to see if
23 I could get in touch with these collaborators in France to see
24 if there was something I didn't understand about it, and that
25 was the initiation of my --

Michael D. West, Ph.D. - Direct

1 Q Did you -- I apologize for interrupting.

2 And did you in fact reach out to the collaborators in
3 France?

4 A Yes, I did.

5 Q What did you learn?

6 A Well, what I learned was, as I suspected and as -- as you
7 would expect from the nature of these experiments that were
8 under way between Harvard and Institut Curie, were that these
9 were fertilized frog eggs that had been rendered inert - by
10 "inert" I mean nonliving - through a series of chemical
11 treatments. So they were formalin fixed.

12 As you may know, formaldehyde -- formalin is a version of
13 formaldehyde. It's a treatment that kills everything. So
14 again, I have formal training in virology and epidemiology. It
15 kills all known viruses, for instance. But it would also kill
16 any bacteria, any fungus, mold. It would even kill bacterial
17 spores, which are relatively resistant to being killed. So I
18 provided in my written declaration an example of a published
19 paper that shows that this treatment even destroys bacterial
20 spores.

21 So these samples were rendered as inert as -- I think I
22 mentioned in the written declaration it would be -- to put
23 simply, it would be like shoe leather is not alive. It once
24 had a biological origin, but the process of tanning -- or
25 making paper from a tree. You know, paper's not alive.

Michael D. West, Ph.D. - Direct

1 This process of formalin fixation transforms living
2 material to protein and nucleic acids that can be used for
3 scientific study. So consistent with that, these samples were
4 embedded in wax, paraffin wax, as is common procedure, after
5 formalin fixation and then a series of dehydration steps
6 through using alcohol, were embedded in this wax so that they
7 could be sliced with what's called a microtome and then put on
8 a slide and then studied under a microscope. Some of them were
9 prepared on slides and were in a separate container, as I
10 understand, and were -- they hoped to keep them cool because
11 they were going to study the expression of genes in this
12 protein on the slide. And some were simply left in paraffin
13 and put in vials so that at Harvard Medical School they could
14 make their own slices or sections of these as well and put them
15 on slides.

16 Q Thank you, Mr. West.

17 You mentioned that you have collaborated with several
18 Nobel Prize laureates, if I understood you correctly. Can you
19 describe this collaboration a little more for us.

20 A Well, the -- sure. There are -- there are trends in the
21 history of medicine that -- where some very high-quality work
22 is done and sometimes in the very early stages of development
23 that, you know, some bright minds recognize the trends early
24 on, and the work we began years ago at my first company, Geron,
25 James Watson, the Nobel laureate I mentioned earlier, I was

Michael D. West, Ph.D. - Direct

1 meeting with him and he -- he believed passionately that where
2 this field was heading - we had discussions about this some
3 years ago now - was extremely important, and so his
4 institution, Cold Spring Harbor Laboratory, collaborated with
5 me and my company in the effort to isolate telomerase, and
6 Dr. Carol Greider was a scientist there, Cold Spring Harbor.
7 Dr. Elizabeth Blackburn was at UCSF. So we sponsored research
8 in Carol Greider's lab, and -- and she subsequently won the
9 Nobel Prize for some of those work. And then Dr. Blackburn and
10 I co-authored -- co-invented patents together early on.

11 Q Thank you.

12 Mr. West, do you consider yourself an expert in the field
13 of embryonic development and aging?

14 A Oh, certainly. Yes.

15 Q Are there any other credentials that you have or any other
16 experience that you have that makes you consider yourself an
17 expert in this field?

18 A Well, I suppose anyone can call themselves an expert, but
19 I've been rendered an expert by the U.S. Patent Office in
20 patent interference proceedings in the past, and I was invited
21 by the U.S. House of Representatives to testify once there as
22 an expert in developmental biology and cell biology in the
23 context of the ongoing discussion about stem cells, many of you
24 may remember. And then the U.S. Senate Appropriations
25 Committee asked me to testify numerous times. I don't remember

Michael D. West, Ph.D. - Direct

1 how many times offhand, but it was at least two or three times
2 in the U.S. Senate as an expert in this field.

3 Q Thank you.

4 MR. ROMANOVSKY: Your Honor, at this time petitioner
5 moves to admit Mr. West as an expert witness in the field of
6 embryonic development and biology.

7 THE COURT: Any objection?

8 MR. HARTMAN: Your Honor, we would object. The
9 declaration was filed at 1:00 in the morning. We haven't had
10 an opportunity to file any time for objections or to consult
11 with our own witnesses, and so we would object to designating
12 this witness as an expert in this field.

13 THE COURT: I agree that the witness list was filed
14 late. I saw it approximately the same time you did. It
15 doesn't help in that respect. This witness is qualified on
16 this issue, and you may cross-examine him about both his
17 qualifications and any other subject within the scope of the
18 direct.

19 Any further questions for this witness?

20 MR. ROMANOVSKY: Yes. Just a few, Your Honor.

21 Q Mr. West, are you familiar with Ms. Petrova's scientific
22 work?

23 A Yes, I am.

24 Q And how did you become familiar with her work?

25 A I read her papers. She has four papers that were

Michael D. West, Ph.D. - Direct

1 published in peer-reviewed scientific publications, which are
2 readily available on PubMed, the electronic database. I read
3 those carefully as well as her CV, her curriculum vitae.

4 Q And what conclusions did you come to after reviewing
5 Ms. Petrova's scientific work?

6 A Well, I would say somewhat passionately that it is
7 excellent science. *Developmental Biology*, for instance, on
8 which she's a first author on that paper, meaning that she did
9 the majority of the work and is responsible for the paper,
10 *Developmental Biology* is a leading scientific publication. The
11 paper describes the heart of what's so exciting about this
12 field, which is we now have the potential to understand in fine
13 detail, sort of like a Rand McNally *Road Atlas*, the biology of
14 development, and within that she states in the paper there's
15 the potential to understand, by mapping early embryonic
16 development, novel ways of intervening in the biology of
17 regeneration and aging, addressing some of the world's greatest
18 problems, one of the greatest problems we have in the United
19 States, for instance, with the health care expenditures.

20 The other papers demonstrate her skills in what's probably
21 the most valuable and needed area right now in medical
22 research, which I'll just call bioinformatics. So she's highly
23 trained in that field. The papers cite her role in providing
24 bioinformatics expertise to Harvard Medical School and Institut
25 Curie in these papers.

Michael D. West, Ph.D. - Direct

1 Why is this so important and valuable? It -- the field of
2 medical research just in the last 20 years, let alone my career
3 in medical research, has transformed remarkably. So what would
4 be -- what would take weeks or even years of research can now
5 be done in a few days for a few hundred dollars. It would be
6 like comparing a drop of water to the Niagara Falls. The
7 amount of data we can extract and these researches we're trying
8 to extract from a laboratory model, an important laboratory
9 model, the Xenopus model, widely used, was -- would generate,
10 you know, terabytes of data, massive amounts of data.

11 And her skills to perform mathematical manipulations of
12 this data and put it in an interpretable form when there's so
13 much data that we can now extract from cells and from diseased
14 tissues or developing tissues in this case means that people
15 with her skill sets are highly sought after. Somewhat similar
16 to the way in artificial intelligence experts in this field,
17 you know, receive great salaries and are greatly sought after
18 by industry, in the same way in the medical field people with
19 the skills that she has are highly sought after, and I can see
20 why Harvard Medical School would like to hire her. Companies
21 like my own would like to hire people with these skill sets.

22 Q So would you hire Ms. Petrova if she applied for
23 employment in your company?

24 A Yeah, I would. In a heartbeat. Absolutely. Yeah. 100
25 percent.

Michael D. West, Ph.D. - Direct/Cross

1 Q Thank you, Mr. West.

2 MR. ROMANOVSKY: I have no further questions for this
3 witness, Your Honor.

4 THE COURT: Any cross-examination?

5 MR. HARTMAN: I just have one question.

6 CROSS-EXAMINATION

7 BY MR. HARTMAN:

8 Q Good morning, Dr. West.

9 A Good morning.

10 Q Have you personally examined the samples that Ms. Petrova
11 brought to the United States?

12 A No.

13 Q Thank you.

14 MR. ROMANOVSKY: Your Honor, may I just comment on the
15 late filing of the witness list?

16 THE COURT: Sure. First let me ask you, do you have
17 any redirect for this witness?

18 MR. ROMANOVSKY: No, we do not.

19 THE COURT: So Mr. West is excused as a witness.

20 (The witness was excused.)

21 THE COURT: And now you want to address the late
22 filing, and you may do so.

23 MR. ROMANOVSKY: Yes. And I apologize for the late
24 filing, Your Honor, but we received Mr. West's declaration
25 yesterday, and this was because he was able to receive a

Cora E. Anderson - Direct

1 response from the Institut Curie in France yesterday. We did
2 know that there's a chance he would be testifying. We did
3 provide his name to the opposing counsel a couple of days ago,
4 at least.

5 THE COURT: And a -- kind of a synopsis of what he
6 would testify about?

7 MR. ROMANOVSKY: No. We -- at that point we could not
8 confirm because he was still waiting to hear from the French
9 lab.

10 THE COURT: Okay. Your next witness.

11 MR. ROMANOVSKY: Thank you, Your Honor. Petitioner
12 calls Cora Anderson.

13 COURTROOM DEPUTY: Please raise your right hand.

14 CORA E. ANDERSON,

15 having been first duly sworn by the courtroom deputy,

16 was examined and testified as follows:

17 THE WITNESS: I do.

18 DIRECT EXAMINATION

19 BY MR. ROMANOVSKY:

20 Q Good morning, Ms. Anderson.

21 A Good morning.

22 Q Please state your full name for the record.

23 A Cora Elizabeth Anderson.

24 Q Ms. Anderson, what do you do for a living?

25 A I'm a research assistant in Marc Kirschner's lab at

Cora E. Anderson - Direct

1 Harvard Medical School.

2 Q And what do you research?

3 A I actually am on two separate projects, but mostly Wnt
4 pathway and previously I worked with Xenopus on the single-cell
5 project.

6 Q Do you know Kseniia Petrova?

7 A Yes.

8 Q And how do you know her?

9 A I met her when she first came to the U.S. She works with
10 me, and we are friends.

11 Q I apologize. Did you say you are friends?

12 A Yes, we are friends.

13 Q Okay. And how long have you known Ms. Petrova for?

14 A A little over two years.

15 Q Based on what you know about Ms. Petrova, do you consider
16 her to be a danger to the community?

17 A Absolutely not.

18 Q And what makes you feel that way?

19 A We've been through a couple of situations where she has
20 been abnormally kind. Perhaps "abnormally" is the wrong word.
21 But situations where most people would react rudely or make a
22 scene, and she has behaved with nothing but grace.

23 Q Could you give us some examples of what you're describing.

24 A Yes. When she first came to the U.S., we went apartment
25 hunting, and a couple of these times were very hot and we were

Cora E. Anderson - Direct

1 on and off transit and walking in the wrong direction, and one
2 particular house -- or apartment we went to look at was -- I
3 don't recall where it was, but it was a sublet, and the man who
4 was showing us around the apartment was rather uncomfortable, I
5 would say creepy, and was insinuating that he was going to
6 continue to leave his things in the room that was intended for
7 Kseniia and that he would be able to unlock her door.

8 It was a generally uncomfortable situation, and I wasn't
9 even going to live there. I can't imagine what that was like
10 for Kseniia, who was first coming here as a young woman and
11 looking for a place for solace and safety. I -- I don't know
12 how she did it, but she did not run out. She was not rude to
13 him. She still thanked him for showing us the apartment, and
14 we left in an orderly manner.

15 Q Thank you. Can you think of some other examples of --
16 that illustrate your point?

17 A There was another time that we were waiting in line at a
18 museum, and she stepped out to look at something. We were very
19 well established in the line. We were there together. There
20 was no running up for her to join me or anything like that. We
21 were there. She stepped out, and there was a man behind us
22 that I guess was frustrated with the wait and started a little
23 bit of static about people getting in and out of line even
24 though we were very well established in line, and I think I
25 went to shoot a glance, and she just said it was fine and

Cora E. Anderson - Direct

1 apologized to him. Even though she didn't do anything wrong,
2 she was very kind and just turned around and apologized and
3 just didn't step back out.

4 Q Do you consider Kseniia a close friend of yours?

5 A Yes.

6 Q And is she a kind person?

7 A Oh, she is abundantly kind.

8 Q What makes you say that?

9 A She will go out of her way to do things for others, even
10 sometimes to her own detriment, and she doesn't ever draw any
11 attention to the fact that she does it, and it just seems to be
12 an endless well of kindness.

13 Q In your opinion, if Kseniia is released, from what you
14 know about Kseniia, do you think she is likely to harm anybody?

15 A Absolutely not.

16 Q Do you consider her a trustworthy person?

17 A Yes.

18 Q And what makes you say that?

19 A We have worked together and also have made -- we have had
20 many social things that we've done together. I can give
21 examples of those.

22 Q Yes. If you could provide some examples --

23 A Okay.

24 Q -- that would be great.

25 A So we have worked on projects together many times, and

Cora E. Anderson - Direct

1 there was a point when we were planning over the weekend or
2 around other things that we were doing and it was necessary for
3 her to do a step and then I -- myself to do a step or myself to
4 do a step and her to do a step, and timing was very important,
5 and the accuracy of, like, reflecting what had been done
6 beforehand was very important, and we coordinated these things
7 time and time again, and I had no doubt that if she said, "This
8 is what I have done with this. Here it is for you to do," or
9 vice versa, I've never had any problem with -- with
10 coordinating even kind of intricate protocols or -- or
11 experiments.

12 Q And from what you know about Kseniia, if she is released
13 from custody, how likely do you think it is that she will
14 appear for any scheduled court hearings?

15 A Incredibly likely. Undoubtable.

16 Q Thank you.

17 MR. ROMANOVSKY: I have no further questions.

18 THE COURT: Any cross-examination?

19 MR. HARTMAN: The government has no questions.

20 THE COURT: I have a couple questions for you,
21 Ms. Anderson. What are Ms. Petrova's connections to the United
22 States, the District of Massachusetts? I understand she has no
23 connections to Vermont, but does she have a place to live?
24 What's your understanding of her work situation? Does she have
25 bank accounts? *Et cetera*.

Cora E. Anderson - Direct

1 THE WITNESS: She has a very strong connection to
2 Massachusetts and the U.S. overall. She has a place to live,
3 and she has lived there for a while.

4 THE COURT: How long has she lived there?

5 THE WITNESS: I do not recall right off, but maybe
6 about a year. And before that she lived not very far away,
7 also in Boston.

8 And she loves her job, and any communication that we've
9 had while she's been detained has been about how much she
10 misses work and how she can't wait to be back, and -- and she
11 loves her friends and her colleagues very much, and I do not
12 doubt that she would absolutely love to return and do anything
13 to be back.

14 THE COURT: And when did you first meet her? What
15 year?

16 THE WITNESS: 2023.

17 THE COURT: And in what context?

18 THE WITNESS: Our initial meeting was actually over
19 messages before she got here, and then we met in person to go
20 house hunting and also to welcome her to the lab.

21 THE COURT: All right. So you work at the lab with
22 her?

23 THE WITNESS: Yes.

24 THE COURT: Okay. And on any given day or week, how
25 often do you have an opportunity to observe Ms. Petrova and

Maria Daikova - Direct

1 have communications with her?

2 THE WITNESS: Daily.

3 THE COURT: Daily.

4 THE WITNESS: Multiple times a day.

5 THE COURT: Any follow-up questions based on the
6 Court's questioning?

7 MR. ROMANOVSKY: No, Your Honor. Thank you.

8 MR. HARTMAN: No, Your Honor.

9 THE COURT: Thank you. You may step down.

10 (The witness was excused.)

11 THE COURT: You may call your next witness.

12 MR. ROMANOVSKY: Petitioner calls Maria Daikova,
13 please.

14 COURTROOM DEPUTY: Please raise your right hand.

15 MARIA DAIKOVA,

16 having been first duly sworn by the courtroom deputy,
17 was examined and testified as follows:

18 THE WITNESS: Yes, I do.

19 DIRECT EXAMINATION

20 BY MR. ROMANOVSKY:

21 Q Good morning, Ms. Daikova.

22 A Good morning.

23 Q Could you please state your full name for the record.

24 A Maria Daikova.

25 Q Thank you. Where do you work?

Maria Daikova - Direct

1 A I work in Harvard Medical School, Marc Kirschner lab. I
2 am bioinformatician.

3 Q Can you repeat your job title, please.

4 A I am a research assistant and bioinformatician in Harvard
5 Medical School in Marc Kirschner lab.

6 Q Can you describe for us what you do as a bioinformatician.

7 A My main goal is development and training machine learning
8 models for biological images for finding the differences
9 between different samples, different diseases for aging
10 research, and other biological imaging samples.

11 Q And how long have you been working at Harvard?

12 A For one month.

13 Q Where do you currently reside, Ms. Daikova?

14 A I'm sorry?

15 Q Where do you currently reside? Where do you live?

16 A I live in Boston.

17 Q And do you know Kseniia Petrova?

18 A Yes, I know.

19 Q When did you first meet Kseniia Petrova?

20 A We meet -- we met five years ago. We studied together
21 in -- we did our master degree together in Moscow.

22 Q In what institution? I apologize.

23 A Moscow Physics and Technology Institute.

24 Q And do you consider yourself to be a friend of

25 Ms. Petrova?

Maria Daikova - Direct

1 A Yes. We are friends. We are close friends.

2 Q When did you become friends?

3 A We become friends when we studied together when Kseniia a
4 lot of time help me and support me through our -- through my
5 study of biology and bioinformatics.

6 Q Based on your personal knowledge, do you think Ms. Petrova
7 is a danger to anybody?

8 A No. Absolutely not.

9 Q What makes you say that?

10 A Because I have not seen any situation when Kseniia was a
11 danger for society. She oftentime helped me. She helped me to
12 study biology. She helped me in my personal life, and she
13 spent her personal time to help me, to support me when she
14 could have spent this time for her own job and her own study.
15 She a lot of time spent time for me.

16 Q Have you ever seen her act aggressively towards anyone?

17 A No. Absolutely not.

18 Q Raise her voice at anyone?

19 A No. I think this is the most quiet and positive person
20 that I know.

21 Q Based on what you know about Kseniia, if she is released,
22 how likely do you think it is that she will harm somebody?

23 A No. I think she will go to all judgments that she needs.

24 Q Do you consider Kseniia a reliable person?

25 A Yeah. Absolutely.

Maria Daikova - Cross

1 Q What makes you think she is?

2 A Because when we worked together and when we did our master
3 degree and we did our common student projects, she -- she did
4 all tasks that she needs. When I had a situation when I needed
5 to finish my own work but I didn't have the time because I had
6 a lot of other tasks on my work, Kseniia suggest me to give
7 part of my work, and it was only one day to finish this
8 project, and she did it in her own time, in her weekend, but --
9 she didn't need to do it, but she did it, and she successfully
10 finished it, and not only finished it successfully but she
11 suggested her own way with bioinformatician models that help us
12 to be -- to go to next step of this project.

13 MR. ROMANOVSKY: I have no further questions for this
14 witness, Your Honor.

15 THE COURT: Mr. Hartman, any cross-examination?

16 MR. HARTMAN: Just quickly, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. HARTMAN:

19 Q Good morning, ma'am.

20 A Good morning.

21 Q Where did you work before beginning at Harvard a month
22 ago?

23 A I worked in Israel, company called TargetGene
24 Biotechnologies.

25 Q Did you work with Ms. Petrova at the same Harvard lab

Marc W. Kirschner, Ph.D. - Direct

1 before she was detained?

2 A No.

3 Q Thank you.

4 MR. HARTMAN: No further questions, Your Honor.

5 THE COURT: All right. Any redirect?

6 MR. ROMANOVSKY: No, Your Honor.

7 THE COURT: Thank you. You may step down.

8 THE WITNESS: Thank you.

9 (The witness was excused.)

10 THE COURT: Any further witnesses for the petitioner?

11 MR. ROMANOVSKY: Just one more, Your Honor.

12 Petitioner calls Marc Kirschner.

13 COURTROOM DEPUTY: Good morning. Please raise your
14 right hand.

15 MARC W. KIRSCHNER, Ph.D.,

16 having been first duly sworn by the courtroom deputy,

17 was examined and testified as follows:

18 THE WITNESS: I do.

19 DIRECT EXAMINATION

20 BY MR. ROMANOVSKY:

21 Q Good morning, Mr. Kirschner.

22 A Good morning.

23 Q Could you please state your full name for the record.

24 A Marc Wallace Kirschner.

25 Q Thank you. Mr. Kirschner, what do you do for a living?

Marc W. Kirschner, Ph.D. - Direct

1 A I'm a professor of systems biology, which is sort of
2 mathematics and biology together, at Harvard Medical School,
3 and I run a lab there.

4 Q Could you please describe your education and your
5 experience in the field, if you can do it briefly.

6 A Yes. I think my whole career has been sort of oscillating
7 between physics and mathematics and chemistry on one level and
8 biology on the other. So I was trained as a biochemist in my
9 Ph.D. work, but then I went deeply into biology, developmental
10 biology and also cell biology. And then maybe because of that
11 background or maybe my interest in growing that field, I
12 involved mathematical and computational issues and fundamental
13 problems of biology.

14 Q Mr. Kirschner, do you love what you do?

15 A I do. I can't think of anything better.

16 Q Do you think it is important?

17 A I think it's important. And I think I could demonstrate
18 that other people also think it's important.

19 Q How do you know Kseniia Petrova?

20 A I met Kseniia Petrova. She came to the lab. This is not
21 an unusual situation where people come in knowing very little
22 biology but being very strong in mathematical or computational
23 fields, and she came to the lab well recommended. Her
24 intention was to use her background to grow biological
25 questions but also very much to really understand what the

Marc W. Kirschner, Ph.D. - Direct

1 biological questions were. So it was both a working experience
2 for her and an educational experience for her.

3 Q Could you describe your first interactions with
4 Ms. Petrova.

5 A I could. I mean, I'm not sure it's the very first moment
6 I met her, but, I mean, the early interactions. I would say
7 that she was very shy. She -- I could tell she was extremely
8 interested in learning about biology, so she would ask
9 questions even though she had some difficulty sometimes
10 formulating them in good English in those early days. But then
11 also it went on to her really thinking hard about how she could
12 contribute to the work that was going on in the lab, and she
13 made a very big contribution in bringing certain -- very
14 advanced computational things into problems that we were very
15 interested in.

16 Q Can you describe her contribution a little more.

17 A Yes. We invented a microscope that used a new type of
18 microscopy. We received a patent from the U.S. government on
19 this microscope. It generated lots of amazing pictures in --
20 of tissues. We were interested in disease in tissue,
21 interested in aging in tissues, but it gave all this
22 information. But we were stymied by how we could convert this
23 spatial information into something quantitative and we could
24 really reason with, and we had made some steps doing that with
25 some people that were at Harvard which, in retrospect, were

Marc W. Kirschner, Ph.D. - Direct

1 inadequate, because when Kseniia got involved, she applied some
2 very powerful methods that clarified these things completely
3 and allowed us to extract new information from the microscopic
4 images.

5 Q So do you consider her impact on the lab's work
6 significant?

7 A Yes.

8 Q Now that she's been missing from the lab for the past
9 three months, did that have any impact on the research that the
10 lab was conducting?

11 A Yes. I would say that had she disappeared a couple months
12 earlier, we would be in much worse shape, so she left things
13 that we could use, but at the same time, all sorts of questions
14 that could be answered by computational approaches on these
15 images weren't explored. But I'm just so grateful for what she
16 left before she disappeared, because she left it in very good
17 shape that other people could apply these methods.

18 Q I would like to ask you a few questions about Kseniia's
19 character as a person. How often did you interact with Kseniia
20 when she was in the lab?

21 A Well, I interacted with her every few days, I would say,
22 with having a conversation with her. But same way with other
23 people in the laboratory. Sometimes they're just working and I
24 don't have anything special to add or to question them, and
25 then there's some times where you spend time really delving

Marc W. Kirschner, Ph.D. - Direct

1 into this and spending a lot of time.

2 And one of those was when we were first getting these
3 images and using conventional methods of computational methods,
4 she came to us and said, "There's a better way. There's some
5 newer methods." And she helped develop those methods so that
6 we could apply them to those images. Fortunately, we could
7 still apply them even if she's not there, but we can't further
8 develop them in quite the same way they would have if she were
9 there.

10 Q And from your interactions with Ms. Petrova, how would you
11 describe her as a person?

12 A I -- I think the most important thing I would -- is she
13 has -- she's on a mission to learn biology. She's -- she asks
14 me questions about biology far outside her own work. I think
15 she feels this is what she wants to contribute in, so I think
16 that's kind of her scientific personality.

17 Her -- her personal personality or cultural personality or
18 whatever you want to call it is that she's very cooperative;
19 she pitches in; she participates in all social things; she does
20 a lot of work for those things. She's just a very fine person,
21 and the only barrier, which is getting much better, was that it
22 took -- takes some time sometimes to talk to her to really get
23 things across because her language was not at the level of all
24 the native people in our lab, but she's gotten much, much
25 better at that, but at the beginning it was work to try to talk

Marc W. Kirschner, Ph.D. - Direct

1 to her.

2 Q How would you describe her language abilities now?

3 A Well, either I've grown quite accustomed to her way of
4 speaking or she's also improved, and I think it's a little bit
5 of both. I -- I really do enjoy talking to her, and she comes
6 to me with questions which are outside what she's working on
7 because she's curious about the biology. She wants to learn
8 it. And I think -- you know, I would say that my biological
9 background has been very broad, so she asks me about all sorts
10 of things, and I usually know something about them.

11 Q You mentioned that when you met her she was very shy.
12 Would you say she continues to be shy?

13 A Well, I think the shyness came in two parts. She
14 recognized that her language skill -- spoken language skills
15 needed improvement, and that got better and better as she spent
16 more time talking to people, so I think that was the major
17 issue.

18 Q Have you ever seen Ms. Petrova being disrespectful to
19 anybody in the lab or outside the lab?

20 A I think if I were to think of a person in the lab who
21 would least be disrespect- -- most people are not
22 disrespectful. It's a very respectful group. But she would be
23 the last person who would be -- I could think of as being
24 disrespectful.

25 MR. ROMANOVSKY: I have no further questions for this

1 witness, Your Honor.

2 THE COURT: Mr. Hartman, any cross-examination?

3 MR. HARTMAN: The government has no questions for
4 Dr. Kirschner.

5 THE COURT: Thank you, sir. You may step down.

6 (The witness was excused.)

7 THE COURT: So you have no further witnesses for the
8 petitioner; is that correct?

9 MR. ROMANOVSKY: That is correct, Your Honor.

10 THE COURT: Are you asking that the Court admit
11 Exhibits A through J to your first amended petition for writ of
12 habeas corpus and complaint for declaratory judgment and
13 injunctive relief, which is Document 57-1, now that the Court
14 has ruled on the motion for leave to amend?

15 MR. ROMANOVSKY: Yes, Your Honor.

16 THE COURT: Any objection to those being admitted for
17 purposes of this hearing?

18 MR. HARTMAN: Yes, Your Honor. Just in that they
19 were -- the petition was amended today, so we have not had a
20 chance to review the documents after the Court's ruling.

21 THE COURT: Well, the petition was -- leave was
22 granted today. The petition was filed on the 22nd, and I'm
23 confident, because you've been very attentive to your duties,
24 that you've read the petition --

25 MR. HARTMAN: I have.

1 THE COURT: -- revised petition. Yes. So any
2 objection, other than that I granted leave to amend today, to
3 admitting Exhibits A through J?

4 MR. HARTMAN: Just to reserve the government's ability
5 to respond to the petition and the attachments in due course,
6 Your Honor. Thank you.

7 THE COURT: And I have indicated that I'm going to
8 grant you 14 days, or more time if you want, to supplement your
9 motion to dismiss.

10 Exhibits A through J to Document 57-1 are admitted.

11 (Petitioner Exhibits A-J were received in evidence.)

12 THE COURT: I'm now going to hear your arguments on
13 the bail hearing, and I'm going to talk about first the things
14 I think we all agree on, and then I'm going to address for you
15 some of the questions I still have after your filings, which I
16 have obviously read and found very helpful.

17 I think both parties agree that this court has no
18 jurisdiction to review or stop Ms. Petrova's removal
19 proceedings. I think that you both agree that this court has
20 no jurisdiction to enjoin the government's criminal case
21 against her. And I think we all agree there's no order of
22 removal, so this court is not going to be reviewing an order of
23 removal, and if there was one, that would be outside this
24 court's jurisdiction.

25 I think we all agree that in terms of her detention by

1 ICE/HSI, and I'm going to use those interchangeably,
2 Ms. Petrova has exhausted her administrative remedies by twice
3 asking for parole and twice receiving denials of parole even
4 though the reasons for those denials seem to have shifted a
5 bit.

6 I think both parties agree that Ms. Petrova is not a
7 danger to the safety of the community or another person in the
8 community. I know the government has made a representation to
9 the Western District of Louisiana court that "Considering the
10 lack of criminal history, Ms. Petrova does not pose a danger to
11 the community" and that in terms if bail was granted, the only
12 remaining concern is a risk of nonappearance. If I have that
13 wrong, you're free to correct me, but I think that that's where
14 we're at.

15 I think it's uncontested that Ms. Petrova has been in the
16 United States helping the United States perform important
17 biological research, and I don't know if there's any contest as
18 to whether the biological samples that she brought to Logan
19 Airport and which are the basis for the revocation of her visa,
20 they're nonhazardous, nontoxic, not alive. I don't expect you
21 to fully brief that issue, but I wondered if that's something
22 that we all agree on or if it's a contested issue.

23 The government has asked that this case be transferred to
24 the District of Massachusetts, arguing that all the operative
25 facts took place there. The petitioner in turn has asked this

1 court to rule that if she remains detained, she be detained in
2 the District of Massachusetts or surrounding states, including
3 Vermont. So I am wondering to what extent that if the criminal
4 case is proceeding in Massachusetts, whether, after this court
5 rules, this case should be transferred to the District of
6 Massachusetts. There is an open question, even though the
7 district court ruled that the individuals in *Ozturk* and *Mahdawi*
8 could not be removed and could not be detained outside a
9 particular location, whether the Court can actually direct
10 somebody be -- to be detained here or there or whether that's
11 the Executive Branch's prerogative.

12 I can let you know in your typical criminal case, I do not
13 tell the marshals where to detain somebody. I might ask that
14 somebody can, you know, remain at a certain location for some
15 rehabilitative purpose or some medical purpose, but it's really
16 the marshals' prerogative as to where people are detained.

17 I'm wondering if this court grants Ms. Petrova's release
18 from the ICE detainer that -- and if the magistrate judge in
19 the criminal case decides to release her as well, whether or
20 not the government's position is that ICE could just rearrest
21 her, and if so, I want to know what the basis of that is.

22 And then I'm wondering if this court decides to release
23 her and the District of Massachusetts decides not to release
24 her, whether the petitioner concedes that at least as far as
25 bail, that's outside of this court's jurisdiction.

1 We took up this argument in the course of the motion to
2 dismiss oral argument, and I want to make sure I understand the
3 government's position on this point. So I know the government
4 believes this court does not have jurisdiction to entertain
5 this petition, that these are removal proceedings, that it's
6 outside the scope of what a district court can do, but I don't
7 have a clear statement as to whether the government agrees that
8 if the Court says it has no jurisdiction to determine whether
9 or not the immigration officer acted lawfully and violated due
10 process, that no court's going to consider that.

11 The immigration court is not going to take up any
12 constitutional issues. The immigration court is not going to
13 determine whether an immigration officer has lawful authority
14 to revoke somebody's visa for a customs violation. Those
15 issues will be undecided by anybody because the immigration
16 court does not have jurisdiction to consider APA,
17 Administrative Procedure Act, claims, and the immigration court
18 does not have authority to consider constitutional issues, so
19 do you concede that if this court doesn't decide it, nobody
20 will be deciding those issues?

21 Finally, the Commonwealth of Massachusetts has filed an
22 amicus brief, and I have heard from the petitioner about that,
23 but the petitioner's claims are a bit different from the
24 Commonwealth of Massachusetts', and I haven't really heard the
25 government's position. So the Commonwealth of Massachusetts

1 has been granted and has filed an amicus brief basically saying
2 that Ms. Petrova's case is part of a larger battle against
3 Harvard University and reflects, and I quote, "policy and
4 practice of targeting international students and
5 academics . . . for visa revocation and detention." They claim
6 it's done for trivial and unlawful reasons, it's part of a
7 retaliatory purpose. Ms. Petrova, even in her revised habeas
8 petition, doesn't advance that claim, and I wonder if there is,
9 therefore, no basis in her petition to consider it or whether
10 she thinks that because the Commonwealth has raised that in the
11 amicus brief it's something that the Court should consider as
12 well.

13 So I'm going to start with Ms. Petrova's counsel. I think
14 we all agree that the governing standard is in *Mapp v. Reno* and
15 that in order for this court to release Ms. Petrova on bail,
16 the Court must find that the petitioner has demonstrated that
17 "the habeas petition raises substantial claims" and that
18 "extraordinary circumstances exist that make the grant of bail
19 necessary to make the habeas remedy effective."

20 Let's start with you, Mr. Romanovsky.

21 MR. ROMANOVSKY: Thank you, Your Honor.

22 If I can make some comments on the *Mapp* standard and then
23 try to address some of the issues that you raised, please.

24 So Ms. Petrova has raised substantial claims. It is our
25 position that the conduct of CBP officers at Logan Airport on

1 February 16th was unlawful. I think we have demonstrated that
2 the officers did not have a legitimate reason to revoke
3 Ms. Petrova's valid J-1 visa. We have demonstrated that the
4 finding of inadmissibility based on her alleged customs
5 violation was not a proper finding of inadmissibility. The
6 Immigration and Nationality Act does not contain a provision
7 that makes one inadmissible for committing a customs violation.

8 Because we showed that the government's conduct at the
9 airport was unlawful, the APA allows this court -- the
10 Administrative Procedure Act allows this court to set that
11 conduct aside, and if that conduct is set aside, then the
12 detention of Ms. Petrova becomes unlawful. So we do
13 respectfully maintain that she has raised substantial claims.

14 As far as the extraordinary circumstances, the Court in
15 *Mahdawi* held that even the lack of danger to the community or
16 flight risk could serve as an extraordinary circumstance, but
17 there's a lot more in this particular case. Mr. West testified
18 about the value of Ms. Petrova's research to the national
19 interests of the United States. Mr. Kirschner, the head of the
20 lab, testified as to the dramatic effect that Ms. Petrova's
21 presence in his lab had on the work that the lab was doing. We
22 respectfully suggest that it qualifies as an extraordinary
23 circumstance.

24 And one additional extraordinary circumstance is the
25 apparent government misconduct in the use of the criminal

1 prosecution to gain advantage in the immigration case, and we
2 have consulted several customs experts, and everybody agrees
3 that people just don't get prosecuted for smuggling in a
4 situation like this.

5 So all of the things point to some really extraordinary
6 circumstances in this case, and we respectfully request that
7 Ms. Petrova be ordered released on bail because the release on
8 bail is what needs to happen to make the habeas remedy
9 effective.

10 As far as the points that Your Honor raised that I wanted
11 to address, I -- the petitioner agrees with all of the points
12 that Your Honor listed as uncontested. Obviously I can't speak
13 for the government, but we do agree that the biological samples
14 were not really biological in the sense that they were inert
15 and posed no threat to anybody, and Mr. West actually reached
16 out to the lab in France to verify what it was exactly that
17 Ms. Petrova was bringing to the United States, and he testified
18 credibly as to the nature of the embryos, and he testified that
19 they were as dangerous as a piece of leather, meaning they were
20 not dangerous at all.

21 We also agree that the habeas remedies have been
22 exhausted, although I do want to point out that Ms. Petrova
23 requested parole from ICE on three occasions. The first
24 request was not responded to, and the two subsequent requests
25 received those standard denials with the boxes checked next to

1 danger to the community and -- and flight risk. The first one
2 was just the flight risk, and somehow while being in ICE
3 detention, Ms. Petrova became a danger to the community for
4 purposes of the second denial.

5 As far as the jurisdictional piece, we do agree with this
6 court that this court has no jurisdiction to stop Ms. Petrova's
7 removal proceedings, and we do concede that if the criminal
8 court in Massachusetts does not release Ms. Petrova on bail,
9 this court is unlikely to have any jurisdiction to order
10 release in this case. We are, however, asking for an order
11 from this court to enjoin ICE from re-detaining Ms. Petrova if
12 she is released on bail from criminal custody, and it is not
13 just likely, it is virtually certain that ICE will pick her up
14 as soon as she is released from criminal custody.

15 There's an immigration detainer lodged by ICE. DHS has
16 already confirmed that they plan to detain Ms. Petrova as soon
17 as she's released from criminal custody. As a matter of fact,
18 they maintain that they must do that, and in the immigration
19 court case in Louisiana, the government filed a motion to
20 postpone their response to our request to change venue to
21 Massachusetts because they think that she's going to end up in
22 Louisiana.

23 And just this morning, about an hour ago, the immigration
24 judge in Louisiana granted DHS's motion to postpone their
25 response. Everybody is waiting for this hearing to take place,

1 and the government is hoping that Ms. Petrova will go right
2 back into ICE custody as soon as she's released from criminal
3 custody and will go straight to Louisiana.

4 If I may have a second to review Your Honor's other
5 points.

6 Yes. Regarding Ms. Petrova's case potentially being part
7 of the larger "war on Harvard," we do not allege that in the
8 amended complaint. We do not -- at this point we do not have
9 enough evidence to allege that. We can read the tea leaves.
10 We can read between the lines. But we have -- at this point we
11 have no evidence to suggest that this was the motivation behind
12 Ms. Petrova's initial detention.

13 We did file a request under the Freedom of Information
14 Act, and we do want to get to the bottom of it, and we
15 certainly will amend the complaint if we receive documentation
16 about what actually happened at Logan on February 16th. The
17 facts just don't -- don't line up, Your Honor. Things don't
18 happen the way they did, typically. And this is why we filed
19 the FOIA request, and this is why we will be pursuing all
20 available remedies to get the information that we're entitled
21 to get from the government to understand who made the decision
22 to detain her, who made the decision to prosecute her
23 criminally, and what were the considerations behind those
24 decisions.

25 And finally I wanted to address Your Honor's point

1 regarding the ability of the immigration court to resolve
2 Ms. Petrova's claims. Ms. Petrova right now is in removal
3 proceedings for "further consideration of her asylum claim."
4 She can only get asylum in immigration court. She will
5 certainly not get review of her APA claims. She cannot get her
6 visa reinstated. She cannot get the determination by CBP set
7 aside by an immigration judge or the BIA. The Executive Office
8 for Immigration Review does not do this. They do not resolve
9 the issues that we've brought before this court.

10 If Your Honor has any other questions, I'm happy to answer
11 them.

12 THE COURT: No. You answered my questions. Anything
13 else that you want to say in support of your petition for
14 release at this time?

15 MR. ROMANOVSKY: No, Your Honor. We'd just
16 respectfully request that this court issue an order preventing
17 ICE from taking Ms. Petrova back in their custody.

18 THE COURT: All right.

19 MR. ROMANOVSKY: Thank you.

20 THE COURT: Thank you. And I'll give you the last
21 word after we hear the government's argument.

22 MR. ROMANOVSKY: Thank you, Your Honor.

23 MR. HARTMAN: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MR. HARTMAN: I think I'm going to start with our

1 threshold argument that the position is moot. The original
2 petition has been moot since March 7th because Ms. Petrova was
3 placed into removal proceedings as we have discussed. That was
4 the only relief the Court could order under 1252(e)(4), and so
5 our view is the original petition is moot.

6 To the extent that the bail petition is proceeding on the
7 newly amended petition, our view is that it's moot because
8 she's now in U.S. Marshals' criminal custody, and kind of
9 concomitantly with that is the ripeness issue where we don't
10 know, to Your Honor's point, if she would be detained in
11 Massachusetts or some other venue, and so our view is that
12 under the prudential ripeness doctrine, the Court should wait
13 to resolve the bail issue until the magistrate judge rules on
14 the Bail Reform Act issue and have greater clarity about where
15 exactly DHS would detain her during the pendency of the
16 Massachusetts criminal proceeding.

17 To your point about jurisdiction, so our view is that an
18 immigration judge can certainly address this issue. The
19 immigration judge in every case has to make a removability
20 determination. That is 1229c(c)(4)(1)(A) *[sic]*, I believe.
21 And so it's something that an immigration judge does in every
22 case, and Ms. Petrova --

23 THE COURT: Does the judge, though, review whether or
24 not an immigration officer acted outside of his or her
25 authority? I didn't see any cases cited from any immigration

1 court to that effect in your filings.

2 MR. HARTMAN: So I think the immigration judge would
3 need to determine whether the immigration visa was valid,
4 because the charge of inadmissibility under 1182(a)(7) asks
5 that question, and so the bottom-line inquiry, was Ms. Petrova
6 inadmissible -- or is Ms. Petrova inadmissible in her removal
7 proceedings, is one that the immigration judge has to address.
8 And the subsidiary question there is obviously whether the visa
9 is valid or not, and if the immigration judge concluded that
10 Ms. Petrova could meet her burden by clear and convincing
11 evidence to show she was entitled to admission, then in removal
12 proceedings the burden shifts to the Department of Homeland
13 Security, and it would have to lodge a different charge under
14 8 USC 1227, which brings us to the 1227(a)(1)(B) charge that a
15 visa's been revoked, and in that circumstance the burden would
16 be on the government to show that by clear and convincing
17 evidence.

18 In 1201(i) is the jurisdictional provision that makes that
19 reviewable in the Court of Appeals if that's the only basis of
20 removability, so it's a long chain of events, and I know
21 Ms. Petrova has challenged her removability in removal
22 proceedings, and so this is the exact issue that the
23 immigration judge is addressing, and our view is that
24 1252(a)(5)(b)(9), in conjunction with *Delgado*, preclude this
25 court from addressing whether or not she's inadmissible.

1 And to the extent, you know, all of these claims relate
2 back to what happened at Boston Logan, you know, we agree that
3 there is limited habeas review to review expedited removal
4 proceedings, but they're moot, and even under the limited
5 jurisdiction the Court had, as set out in the order to show
6 cause, transfer for a removal proceeding is the only relief,
7 and so in our view those proceedings need to continue, and
8 judicial --

9 THE COURT: So is it your position that the
10 immigration court can consider constitutional issues?

11 MR. HARTMAN: That's a tricky question. The
12 immigration court certainly considers issues like motions to
13 suppress that are predicated on unconstitutional Fourth
14 Amendment search issues. It's all reviewed *de novo*, but the
15 immigration court and the board could not, for example, strike
16 down a regulation as unconstitutional. But it can certainly
17 apply existing Court of Appeals precedents that identify some
18 unconstitutional conduct.

19 THE COURT: Do you agree that the immigration court
20 cannot consider APA claims?

21 MR. HARTMAN: That's true. And I want to address the
22 board decision that my friend has cited. It's a concurring
23 opinion that addresses notice and comment. So I agree that the
24 board can't find that a regulation that was promulgated didn't
25 adhere to notice and comment requirements. I agree that the

1 board could not address a claim that rule-making didn't adhere
2 to notice and comment, but the board can certainly address
3 legal issues, and whether or not a noncitizen is inadmissible
4 under an 1182(a)(7) charge is inherently a factual and legal
5 issue that courts can address.

6 It's not cited in our papers, but there's the *Torres* case
7 in the Ninth Circuit that's *en banc* that addresses when the
8 Mariana Islands became part of U.S. territory, whether everyone
9 there was inadmissible under an 1182(a)(7) charge or not, so
10 these are issues that come up frequently in immigration court
11 and that the immigration judge can address and that Ms. Petrova
12 can obtain judicial review of through a petition for review in
13 the appropriate court of appeals.

14 And that goes as well for her visa revocation challenge.
15 In our view 1201(i) funnels that challenge to the Court of
16 Appeals and is the sole basis of her removability, and the
17 reason why it makes sense, because the 22 CFR 41.122
18 regulation, (e)(4) makes it so that if you're ever removed in
19 removal proceedings, whatever visa you have is automatically
20 revoked as a matter of law, and so 1201 has built in this
21 harmless error doctrine where Congress didn't want district
22 courts to be reviewing this issue if it didn't end up mattering
23 to the outcome of removal proceedings.

24 And so our view is that none of those issues are
25 reviewable in a habeas petition. I think that that goes to our

1 fundamental point on the substantial claim prong of *Mapp* is
2 that Ms. Petrova hasn't demonstrated a substantial claim on the
3 merits. Her reply, the first paragraph waives any due process
4 challenge to the detention of noncitizens who arrive at a port
5 of entry, and *Jennings* makes clear that detention is mandatory,
6 whether it be under 1252(b)(1) or 1252(b)(2). And since the
7 ultimate habeas standard is whether detention is contrary to
8 law or unconstitutional, our view is that Ms. Petrova can't
9 meet that burden because *Jennings* controls the statutory
10 question about whether this detention is authorized as a matter
11 of law, and *Thuraissigiam*, *Mezei*, and Ms. Petrova's concession
12 control the constitutional issue.

13 Sorry. I'm just going through Your Honor's questions.

14 THE COURT: Take your time.

15 MR. HARTMAN: So there is an ICE detainer for
16 Ms. Petrova, so if she was released under the Bail Reform Act
17 as part of the Massachusetts criminal case, ICE could re-detain
18 her. You had asked if ICE would re-detain her in light of this
19 court's order. I think it would just depend on the substance
20 of the court's order, Your Honor, and whether she --

21 THE COURT: Would it need a new basis? So would ICE
22 need a new basis, or could it say, "Yes, the District of
23 Vermont has released her, but we're not going to comply with
24 that order and we're going to just lodge a new ICE detainer on
25 the same grounds and arrest her"?

1 MR. HARTMAN: So my understanding of the *Ozturk* and
2 *Mahdawi* cases is that the government has not re-detained those
3 noncitizens, and I would expect the government to adhere to the
4 same course of action in this case. I don't have any
5 indication that the government would act otherwise, Your Honor.

6 THE COURT: All right.

7 MR. HARTMAN: As to the Massachusetts amicus, I think
8 we touched on that briefly at the last hearing. Our view is
9 that this isn't a retaliation case. The criminal complaint
10 makes clear that Ms. Petrova was detected by a K-9 dog. I
11 don't know how we alleged that the dog was retaliating against
12 Ms. Petrova in detecting these undeclared samples.

13 THE COURT: So then you would not concede that these
14 were nonhazardous, not alive? I mean, I think that -- well, I
15 know a K-9 dog can detect pills now. They're certainly not
16 alive. So maybe those two have nothing in common, but let's
17 hear your position, if any, on whether or not these are
18 actually biological samples that posed any risk of harm to any
19 person or if you have no position on that.

20 MR. HARTMAN: So the government doesn't take a
21 position on that. In our view it's not relevant to resolving
22 any of the legal issues before the Court.

23 And on the extraordinary circumstances prong of *Mapp*, our
24 view, while Ms. Petrova has many laudable aspects concerning
25 her case, *Mapp* is intended to not be a matter of convenience,

1 and it's really intended to ameliorate extraordinary
2 circumstances, and detention in any case is certainly an
3 inconvenience to the person that's detained, and virtually
4 every noncitizen has some type of work. That's commendable,
5 and that's just not, under the *Mapp* and *Elkimya* standards,
6 sufficient to grant bail, and so we'd ask the Court to deny
7 Ms. Petrova's request for bail.

8 THE COURT: Thank you.

9 MR. HARTMAN: Thank you, Your Honor.

10 THE COURT: Any brief response from you,
11 Mr. Romanovsky?

12 MR. ROMANOVSKY: Thank you, Your Honor.

13 Very briefly. First, regarding the possible new bases for
14 ICE to detain Ms. Petrova if and when she's released from
15 criminal custody, if she's not detained under 1225(b)(1), the
16 only two other possibilities would be 1225(b)(2) if the
17 government can show that Ms. Petrova was not clearly beyond
18 admissible at the time of admission at the border at Logan
19 Airport on February 16th or based on her pending removal
20 proceedings. We would respectfully maintain that neither of
21 these two grounds would be a *bona fide* reason for ICE to
22 re-detain Ms. Petrova.

23 As far as 1222 --

24 THE COURT: But let's stay on that, because
25 Mr. Hartman has said, "Look, we didn't do this -- we didn't

1 rearrest them by ICE in Mahdawi or Ozturk. I don't anticipate
2 that we would do it in this case were she to be released. This
3 court should be reluctant to enjoin agencies, especially
4 outside the judicial branch, from doing anything it doesn't
5 need to," and why shouldn't the Court take that representation
6 at face value?

7 MR. ROMANOVSKY: Because they're making two different
8 representations in two different venues, Your Honor. They're
9 making a representation to the immigration court in Jena,
10 Louisiana, that they are planning to re-detain Ms. Petrova.
11 What they just said to the immigration judge in Louisiana,
12 "Don't change the venue just yet. We'll see what happens at
13 the hearing, because maybe you don't need to change venue from
14 Louisiana to Boston," it can only mean that they're expecting
15 Ms. Petrova to be back in Louisiana. And she certainly is not
16 planning to travel to Louisiana on vacation. It can only mean
17 that the government is planning to re-detain her, and the
18 government has said repeatedly "She is subject to mandatory
19 detention, in our view. We have to detain her." And the fact
20 that there's an immigration detainer lodged at the same time
21 she is taken out of ICE custody only suggests that this is the
22 plan. As soon as she is out from criminal custody, if she is,
23 ICE will pick her up.

24 To go back to the two possible new bases, Your Honor,
25 1225(b) (2), that charge would not be appropriate because there

1 was no other determination made at the airport that she was not
2 beyond doubt admissible at the time of admission.

3 And as far as the other possible basis for her
4 re-detention pending removal proceedings, we would respectfully
5 suggest that the only reason why she is in removal proceedings
6 in the first place is because she was unlawfully -- her visa
7 was unlawfully canceled at the airport and she got detained
8 based on that conduct by -- unlawful conduct by CBP, and this
9 is how she ended up in removal proceedings in the first place.
10 We're certainly not challenging the removal proceedings, but
11 for the government to be able to use the pending removal
12 proceedings that stem directly from the unlawful conduct of CBP
13 at Logan Airport, I don't think it would be proper, Your Honor,
14 so we would respectfully request, if this court is willing to
15 issue an order enjoining ICE from re-detaining Ms. Petrova,
16 there has to be some judicial oversight as to the possible new
17 grounds for re-detention.

18 And just one last point, Your Honor. I do want to confirm
19 that based on the case law, immigration judges do not have the
20 authority to rule on constitutional issues, and as my friend
21 suggested, there are some collateral constitutional issues that
22 immigration judges have to take into account, but they don't
23 rule on constitutional issues. They don't rule on APA issues.
24 And in this particular situation, the immigration judge
25 certainly won't rule on the visa revocation. She is there --

1 Ms. Petrova is there only for further consideration of her
2 asylum claim.

3 Thank you.

4 THE COURT: Thank you.

5 When it is fully briefed, the Court's going to issue a
6 decision on the motion to dismiss, or if the parties jointly
7 request, the Court may transfer that motion, fully briefed, to
8 the District of Massachusetts. I'll wait to hear from you on
9 that.

10 For the purposes of the bail hearing, the Court has
11 determined that time is of the essence and that it will further
12 the interest of justice if the Court rules on the record
13 instead of issuing a written decision.

14 The Court makes the following findings of fact by clear
15 and convincing evidence and reaches the following conclusions
16 of law for purposes of the bail hearing only.

17 On March 7th, 2025, ICE issued a notice to appear ordering
18 Ms. Petrova to appear before an immigration judge. The notice
19 to appear alleged that Ms. Petrova was subject to removal
20 pursuant to 21- -- 212(a)(7)(A)(i)(I) of the Immigration and
21 Nationality Act, the INA, as amended, as an immigrant who "at
22 the time of application for admission . . . is not in
23 possession of a valid unexpired immigrant visa, reentry permit,
24 border crossing card, or other valid entry document required
25 by" the INA "and a valid unexpired passport, or other suitable

1 travel document, or document of identity and nationality . . .
2 is required under the regulations issued by the Attorney
3 General under section" 211(a) of the INA.

4 Although the government's reasons for detaining
5 Ms. Petrova have shifted, this is now the basis for her removal
6 proceeding. However, the immigration judge in Ms. Petrova's
7 proceedings has ordered ICE to file a Form I-261 after finding
8 that the initial charging document was legally deficient.

9 The Form I-261 sets forth the following allegations in
10 lieu of those set forth in the original charging document:

11 "1. You are not a citizen or national of the United
12 States;

13 "2. You are a native of Russia and a citizen of Russia;

14 "On February 16, 2025, you arrived at Boston Logan
15 International Airport seeking admission on a J-1
16 non-immigration visa.

17 "At the time of admission, an immigration officer found
18 you to be inadmissible to the United States due to having
19 undeclared biological material, to wit, frog embryos, in your
20 possession without the proper permits and supporting materials
21 for such material.

22 "You withdrew your application for admission on
23 February 16, 2025.

24 "Your J-1 visa was cancelled on February 16, 2025, under
25 22 C.F.R. Section 41.122(e) (3) .

1 "You were not then admitted or paroled after inspection by
2 an Immigration Officer.

3 "You are an immigrant not in possession of a valid
4 unexpired immigration visa, reentry permit, border crossing
5 card, or other valid entry document required by the Immigration
6 and Nationality Act; and/or you are an immigrant not in
7 possession of a valid unexpired passport, or other suitable
8 travel document, or document of identity and nationality."

9 Ms. Petrova's next hearing in immigration court is
10 scheduled for July 22nd, 2025.

11 Ms. Petrova is a researcher at Harvard University with no
12 prior criminal history who has ample ties to the District of
13 Massachusetts, where she has been living and working for
14 several years prior to these proceedings. Her activities in
15 the United States did nothing to threaten public safety. To
16 the contrary, she has furthered this country's interest in
17 finding a cure and treatment for cancer in the area of
18 biological and regenerative research. Her work is described as
19 excellent, exceptional, and of national importance by people
20 qualified to render those opinions.

21 At this point, based on the testimony of Michael West, the
22 Court finds that the evidence supports a conclusion that the
23 samples she brought into the United States are wholly
24 nonhazardous, nontoxic, nonliving, and posed a threat to no
25 one.

1 She was initially detained for a customs violation, and
2 then her visa was revoked for that customs violation and she
3 was placed in removal proceedings because her visa was revoked
4 and she was therefore arriving as an alien without lawful
5 documentation allowing her entry. This is kind of a circular
6 process because it was the government that revoked her visa,
7 and it's essentially saying, "We revoked your visa. Now you
8 have no documentation, and now we're going to place you in
9 removal proceedings," and the government has been unequivocal
10 that it intends to deport her to Russia rather than letting her
11 withdraw her application for entry as she requested and go back
12 to France or other countries in which she has lawful status and
13 no fear of persecution or harm.

14 Ms. Petrova filed her habeas petition while incarcerated
15 in the District of Vermont. Accordingly, the Court's
16 jurisdiction, if any, was vested at that time and was not
17 divested by the Court's -- or the government's determination to
18 transfer her to Louisiana or its decision to charge and arrest
19 her for smuggling goods into the United States in the District
20 of Massachusetts.

21 The Second Circuit has recently ruled in *Ozturk* and
22 *Mahdawi* that a federal court has inherent authority to grant
23 bail to a habeas petitioner within its jurisdiction. In those
24 cases it also held that the petitioner's claims of unlawful and
25 retaliatory detention are independent of and collateral to the

1 removal process. The Second Circuit observed that the Supreme
2 Court and our court have explained that 2252(g)'s *[sic]* bar on
3 jurisdiction is narrow and applies only to three discrete
4 actions, a decision to commence proceedings, adjudicate cases,
5 or execute removal orders, and thus is "directed against a
6 particular evil: attempts to impose judicial constraints upon
7 prosecutorial discretion."

8 This court finds it does not have the authority to revoke
9 or stop or enjoin Ms. Petrova's removal proceedings. It also
10 has no ability to review, enjoin, or revoke her criminal
11 prosecution by the District of Massachusetts. But it retains
12 jurisdiction outside these three discrete areas as identified
13 by controlling precedent from the Second Circuit.

14 Under *Mapp v. Reno*, in order for this court to release
15 Ms. Petrova on bail, the petitioner must demonstrate that the
16 habeas petition "raises substantial claims" and that
17 "extraordinary circumstances exist that make the grant of bail
18 necessary to make the habeas remedy effective."

19 The Court addresses first its jurisdiction to proceed.
20 The Court finds two district court cases, *Atanackovic v. Duke*
21 and *Gill v. Mayorkas*, persuasive. There the courts ruled that
22 notwithstanding the jurisdiction-stripping provisions of the
23 INA, a district court has jurisdiction to review under the APA
24 whether a CBP officer is acting outside his or her lawful
25 authority in revoking a visa. Those cases stand for the

1 proposition that an immigration officer simply does not have
2 the same authority or discretion as the Secretary of State or
3 consular office in making that determination and which is the
4 determination the immigration officer made in this case.

5 It is very clear in this case that Ms. Petrova was
6 detained solely for a customs violation. I find the Court has
7 jurisdiction to consider her claim in the context of a habeas
8 petition and whether she is unlawfully detained on that basis
9 and that in doing so the Court does not run afoul of the
10 jurisdiction-stripping provisions of the INA.

11 The immigration officer took action prior to the
12 initiation of removal proceedings and before a notice of
13 removal was issued. There is no pending notice of a removal.
14 The Second Circuit in both *Ozturk* and *Mahdawi* found that
15 chronology important.

16 The Court also finds the Court has limited jurisdiction to
17 consider Ms. Petrova's due process claim. As the parties
18 acknowledge, it's congressional due process, which the Court
19 narrows to the question of: What process is due to an arriving
20 alien? Does that person have the right to expect an
21 immigration officer to follow applicable law, or does an
22 immigration officer have the authority to take unlawful -- or
23 allegedly unlawful an arbitrary and capricious actions against
24 an arriving alien and have that determination be free from
25 review by any court?

1 In her revised petition, Ms. Petrova argues that the
2 process by which she was detained was unlawful because the
3 immigration officer did not have authority to cancel her visa
4 for a customs violation because she was not in fact bringing
5 biological materials into the country as that term is defined
6 by applicable law, because she was not given the opportunity to
7 leave for France as she requested, and because she has been
8 criminally prosecuted to divest this court of habeas
9 jurisdiction and/or to gain an advantage in a civil proceeding
10 by prosecuting her criminally. The Court finds her petition
11 raises substantial claims grounded in the facts and the law on
12 which she has shown there is a likelihood she will prevail.

13 The Court next addresses the government's challenge that
14 the Court is deprived of jurisdiction in this case because
15 Ms. Petrova is now in U.S. Marshals' custody. The majority of
16 circuits have held that filing a detainer alone does not create
17 custody in the INS. The Second Circuit ruled accordingly in
18 *Simmonds v. I.N.S.* in 2003.

19 It has also ruled that custody may be established where
20 there is a reasonable basis to conclude that INS will take
21 custody of the prisoner upon his or her release from prison.
22 In this case the Court finds the petitioner has established
23 that if this court does not act and she is released by the
24 District of Massachusetts in her criminal proceeding, the ICE
25 detainer will be invoked, she will be reinserted into ICE

1 custody, and she will not be released.

2 The Court further finds that, to the extent necessary,
3 Ms. Petrova has exhausted her administrative remedies. She has
4 been held in immigration custody continuously for approximately
5 three months. She has requested parole three times and has
6 been denied parole twice prior to her transfer to the custody
7 of the U.S. marshals.

8 The government has made clear its intention to detain
9 Ms. Petrova while her removal proceedings are pending and to
10 deport her to Russia and in fact contends that her detention is
11 mandatory. There is thus no reason for the Court to believe
12 that were she to be released on bail in her criminal case the
13 federal officials holding her would ignore the ICE detainer.
14 These facts provide a reasonable basis for concluding ICE will
15 take custody of Ms. Petrova if she is released from federal
16 prison and the U.S. Marshals' custody.

17 Accordingly, I find, based on these facts, that
18 Ms. Petrova remains in the government respondents' custody for
19 purposes of the habeas petition under *Simmonds v. I.N.S.*, and I
20 also find that, at least for purposes of her allegedly unlawful
21 detention, she has exhausted her administrative remedies or
22 that, in the exercise of this court's discretion pursuant to
23 *Beharry v. Ashcroft*, exhaustion should be excused as an
24 administrative appeal would be futile. She has raised a
25 substantial question about the applicable law and the

1 constitutional guarantees, and the available remedies provide
2 no genuine opportunity for relief.

3 The Court further finds this case in controversy is ripe
4 and that it is not moot. Ms. Petrova remains detained. She is
5 now in the U.S. Marshals' custody, but there is an ICE
6 detainer. This court can grant her at least some of the relief
7 she has requested, such as release from detention, and a
8 declaratory judgment that the immigration officer's actions in
9 this case were unlawful under applicable law and under the APA.
10 The circumstances of this case are capable of repetition not
11 only in Ms. Petrova's case but in other cases as well.

12 I also find this is both an exceptional and unusual case
13 under *Mapp v. Reno*. Ms. Petrova has submitted compelling
14 declarations and witness testimony that supports the conclusion
15 that what happened in this case was extraordinary and novel,
16 that there does not appear to be either a factual or legal
17 basis for the immigration officers' actions, that Ms. Petrova's
18 life and well-being are in peril if she is deported to Russia,
19 and that the government has made it clear and unequivocal that
20 it intends to deport her to Russia unless she is granted asylum
21 and that it will not allow her to depart to another country
22 where she will be safe and where she has legitimate immigration
23 status.

24 She has also raised a substantial question regarding
25 whether her current detention is the product of a process that

1 has nothing to do with the merits of this case. She is in the
2 process, under a Freedom of Information Act claim, to try to
3 find out if there is a retaliatory purpose behind what has
4 happened to her.

5 If Ms. Petrova's bail is not considered by this court,
6 there will be no determination by an immigration judge that any
7 constitutional rights were violated or that she has been
8 subject to a violation of the APA.

9 The Court further finds that bail is necessary to make the
10 habeas remedy effective in this case because release from
11 detention and ICE custody is the relief sought. The district
12 court in the Western District of New York reached this same
13 conclusion in *D'Alesandro v. Mukasey*, and the United States
14 Supreme Court has ruled in *Demore v. King* -- *Kim* that the
15 detention during a removal proceeding is a constitutionally
16 permissible part of the process. No court has apparently ruled
17 that this principle applies even when the removal proceedings
18 are undertaken for an unlawful or arbitrary and capricious
19 reason by an immigration officer without authority to revoke a
20 visa and set the process in motion.

21 The Court therefore finds by clear and convincing evidence
22 that Ms. Petrova is neither a danger to the safety of the
23 community or a risk of nonappearance that cannot be addressed
24 through appropriate conditions of release and hereby grants her
25 release from ICE/HSI custody under *Mapp v. Reno*. The

1 government may propose conditions of release at this time.

2 Although the Court is reluctant to enjoin an executive
3 agency from undertaking future actions which are uncertain, it
4 relies on the representation from the government's attorney
5 that there is no intention at this time to rearrest Ms. Petrova
6 if she is released by this court and by the District of
7 Massachusetts as well notwithstanding the ICE detainer.

8 I'm going to now turn to you, Mr. Hartman, and ask if you
9 are requesting any particular conditions of release or you
10 defer to the District of Massachusetts and ask this court to
11 await any conditions of release or that determination, because
12 obviously if the District of Massachusetts decides to detain
13 Ms. Petrova, she will remain in U.S. Marshals' custody.

14 MR. HARTMAN: Thank you, Your Honor.

15 The government would request the ability to file just a
16 short brief in the next day or two to address the appropriate
17 conditions so I can consult with my clients and identify what
18 conditions they believe are necessary to ameliorate the risk of
19 flight. And our view is that won't prejudice Ms. Petrova
20 because she's currently in criminal custody, and so I think the
21 brief -- or the government can file its brief with plenty of
22 time for the Court to address that prior to --

23 THE COURT: You have represented she will not -- be
24 transported to the District of Massachusetts no sooner than
25 May 30th, so when do you want to file that?

1 MR. HARTMAN: The 30th, if that would be amenable to
2 Your Honor.

3 THE COURT: Any objection to that?

4 MR. ROMANOVSKY: No, Your Honor. We do not expect
5 Ms. Petrova's criminal bail hearing to take place until next
6 week, so May 30th would be fine with us.

7 THE COURT: All right. And has it been set for a
8 date?

9 MR. ROMANOVSKY: Not yet, Your Honor.

10 THE COURT: Okay. Anything further in this matter?

11 MR. ROMANOVSKY: Not from us, Your Honor.

12 MR. HARTMAN: Sorry, Your Honor. Just a quick
13 clarifying question on the amended petition. Does that
14 encompass the four -- three or four FOIA claims?

15 THE COURT: It does. I opined that I've never seen a
16 habeas petition for FOIA reasons. I don't know that that will
17 be available relief that I could -- as we know, habeas
18 effectively says bring the body to me and I will decide whether
19 or not the person is unlawfully detained. I've never seen it
20 interact with a FOIA request, so that's novel to me. I
21 expected you would want to brief on that and that I was going
22 to give Mr. Romanovsky an opportunity to respond.

23 MR. HARTMAN: Thank you, Your Honor.

24 THE COURT: All right.

25 (Court was in recess at 11:51 AM.)

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C E R T I F I C A T I O N

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

May 28, 2025

Johanna Massé, RMR, CRR